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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Annual report of the United Nations High Commissioner for Human Rights on the human rights situation in Honduras

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the annual report of the United Nations High Commissioner for Human Rights on the human rights situation in Honduras.

In his report, the High Commissioner describes the situation of human rights in Honduras; the fight against impunity and the strengthening of the justice sector in a context of violence; the environment in which human rights defenders operate and the steps required for their protection; and the human rights situation of women and indigenous peoples. He also provides an overview of the challenges in the development sphere and their impact on economic and social rights.

Following a summary of the activities undertaken by his office in Honduras, the High Commissioner proposes recommendations.

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Annual report of the United Nations High Commissioner for Human Rights on the human rights situation in Honduras*

I. Introduction

1. On 4 May 2015, the United Nations High Commissioner for Human Rights signed an agreement with the Government of Honduras concerning the establishment of a country office. In accordance with its mandate, the office of the High Commissioner for Human Rights in Honduras (OHCHR-Honduras) monitors the situation of human rights in the country and provides capacity-building and technical assistance to State institutions, the national human rights institution and civil society organizations, with the overall goal of enhancing the promotion and protection of human rights in the country.

2. The present report is submitted to the Human Rights Council under article V, paragraph IV, of the agreement between the High Commissioner and the Government. It contains a description of the human rights situation in Honduras, with particular attention to the rule of law institutions, the fight against impunity and security policies in a context of violence and insecurity; the situation of human rights defenders, indigenous peoples and women; and development and economic and social rights. The activities of OHCHR-Honduras are described and recommendations provided.

II. National context

3. The political landscape of the year 2016 was characterized by campaigning for the 2017 presidential, legislative and municipal elections. In April, the new members of the Constitutional Chamber of the Supreme Court confirmed the April 2015 decision of the Chamber in its previous composition,[1] in which the Chamber declared inapplicable a series of constitutional articles, including the unamendable article 374 expressively prohibiting, inter alia, the re-election of the President. These decisions represented the legal basis for allowing current and former mandate holders to stand for the 2017 elections. On 9 November, the current President, Juan Orlando Hernández, announced his acceptance of the nomination of the National Party for the elections in 2017.

4. Official and independent data indicate that there has been a reduction in criminality. However, violence and insecurity permeate all levels of society and ways of life, affecting particularly individuals or groups who challenge social norms or the status quo, including human rights defenders, indigenous peoples, women, and lesbian, gay, bisexual, transgender and intersex people. The majority of the population cites insecurity as the country's most urgent problem, followed by the economy, corruption and poor governance.[2] The assassination of indigenous leader Berta Cáceres attracted unprecedented international attention. Human rights organizations urged the Government to do everything necessary to bring all the culprits to justice. The offer by the Inter-American Commission on Human Rights to appoint an independent commission to support the investigation was not accepted.

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* Circulated in the language of submission and Spanish only.

[1] The judges of the Supreme Court are elected for a period of seven years. The most recent election was held in February 2016.

[2] *Percepción Ciudadana Sobre la Inseguridad y Victimización en Honduras*, Informe Ejecutivo 2016, Instituto Universitario en Democracia, Paz y Seguridad, p. 8.

5. In April, a special commission was established to purge the National Police. As of November, it had reviewed the files of 2,590 officers and recommended the separation of 1,678 of them.[3] In November, the President announced that a similar process would be undertaken for the judiciary and the prosecution service.

6. In January, the Government and the Organization of American States signed an agreement to establish a support mission against corruption and impunity in Honduras, as a response to the "*indignados*" movement against corruption and misuse of public funds that marked the second half of 2015. In April, the mission was deployed to assist authorities in a range of areas, including investigation and prosecution of corruption cases. In July, the law on the organization of the judiciary was amended to create a specialized jurisdiction in charge of extortion and corruption.

7. In October, Congress adopted the law on the financing of political parties, which contains provisions that may lead towards improving transparency and accountability. In November, the mission expressed its concern about the modalities of the election by Congress of the judges of the Supreme Court of Auditors as falling short of the obligations assumed by the State with respect to the ratification of anti-corruption treaties.[4]

8. The gross domestic product of Honduras grew by 3.6 per cent in 2015 and was expected to grow in 2016, consolidating the positive trend observed since 2013.[5] Despite the favourable economic outlook, Honduras continues to face one of the highest levels of inequality in Latin America, with 60.9 per cent of families living below the poverty line, including 38 per cent in conditions of extreme poverty.[6] In August, the Government and the United Nations country team signed the United Nations Development Assistance Framework 2016-2021.

III. Rule of law, justice and security

A. Security

9. Violence and crime in Honduras persist owing to a complex set of historical and contextual factors. Institutional weaknesses and poor coordination between agencies responsible for fighting crime, along with low technical capacity, contribute to an environment conducive to the proliferation of national and transnational criminal networks, exacerbated by corruption and a lack of accountability within State agencies. High levels of inequality and social exclusion have resulted in the acceptance of violence as a means to solve conflicts. Association with criminal groups is perceived as a path for social and economic mobility for marginalized youth, who are easily recruited.

10. Both official and independent data indicate that the homicide rate has decreased by 30 per cent since 2011.[7] However, insecurity continues to be a major concern.[8] In addition to the still high murder rate, Hondurans face high levels of crimes against physical integrity

[3] Comisión Especial para el Proceso de Depuración de la Policía Nacional, "Rendición de cuentas", 24 November 2016.

[4] See www.oas.org/es/sap/dsdme/maccih/new/docs/MCH-003-16-Pronunciamiento-MACCIH-OEA-sobre-eleccion-magistrados-TSC.pdf?sCodigo=MCH-003/16.

[5] "Honduras: country at a glance", available from www.worldbank.org/en/country/honduras.

[6] See www.ine.gob.hn/index.php?option=com_content&view=article&id=91.

[7] The National Police put the homicide rate at 54 per cent in 2016. See www.sepol.hn/artisistem/images/sepol-images/files/Estadistica%20tasa%20actual%20Noviembre%202016.xlsx.pdf.

[8] See www.iudpas.org/pdf/Boletines/Nacional/NEd40EneDic2015.pdf.

and property. Groups suffering from marginalization and discrimination, including women, children and young persons, and members of the lesbian, gay, bisexual, transgender and intersex community are particularly affected, in both public and private spheres. In the past few years, a pattern of forced displacement resulting from violence has emerged, and an estimated 174,000 persons (about 41,000 households) are internally displaced (see A/HRC/32/35/Add.4, para. 20). Families with children are at high risk, leading to displacement as a protective mechanism to escape gang-related violence and recruitment.[9]

11. In the context of the comprehensive policy on citizen security, and to strengthen the prevention of and response to crime and social violence, the Government has embarked on a set of reforms accompanied by a gradual increase in the budgetary allocation to the security sector, which reached about 13.6 per cent of the proposed national budget for 2017.[10] This increase was supported by a "security tax", 87 per cent of which has been used to fund defence and security sector institutions, principally the Ministry of Security, the Ministry of Defence and the National Direction of Intelligence and Investigation.[11]

12. The security strategy of the Government has focused on the military, resulting in a notable increase in the military presence. In 2016, the Public Order Military Police comprised over 3,000 troops. In August, the President announced the establishment of two more battalions.[12] The High Commissioner has indicated that the deployment of military forces to perform civil security duties should take place only under exceptional circumstances, be limited in time and be under strict civilian control. In international forums, the Government has indicated that deploying the armed forces to a public security role was a temporary special measure and that they would gradually be withdrawn as the police force was strengthened, towards the end of December.[13] OHCHR-Honduras welcomes this announcement, which further consolidates the course of action signalled by the Congress in 2015, when it declined to ratify decree 283/2014 giving constitutional status to the Public Order Military Police. The military is also part of the National Inter-Institutional Security Force established in 2014 to respond to criminality, together with other security and rule of law entities including the judiciary. The resolution establishing the Security Force issued by the National Security and Defence Council is confidential under the law on the classification of public documents concerning security and national defence.

13. In 2016, the National Police underwent an internal purge and reorganization, the second since 2012. The purge was declared a national emergency after international media had reported that senior police officials were involved in the assassination of police personnel investigating drug trafficking. A special commission was established by decree in April. As of 24 November, the commission had separated 1,651 officers,[14] the overwhelming majority on the grounds of "internal restructuring (1,299) or "voluntary resignation" (178). It also suspended 14 officers under article 116 of the police law and referred the files of 15 separated officers to the Office of the Attorney General.[15] Until these

[9] See http://sedis.gob.hn/sites/default/files/desplazamiento/Caract.Desplazam.Interno_ENG.pdf.

[10] See http://icefi.org/sites/default/files/honduras-_analisis_y_recomendaciones_al_proyecto_de_presupuesto_publico_2017.pdf.

[11] See http://162.243.37.234/_assets/docs/Presentaci%C3%B3n-para-p%C3%A1gina-web-al-30-de-Septiembre-2016.pdf.

[12] The Public Order Military Police was established in 2013 to respond to the "security crisis" facing the country and to protect public order and social peace by focusing on organized crime and common criminality (decree 168/2013).

[13] See documents CAT/C/SR.1436 and CAT/C/SR.1439.

[14] Comisión Especial para el Proceso de Depuración de la Policía Nacional, "Rendición de cuentas", 24 November 2016.

[15] Reference: official memo CEDTPN-130-2016. The Office of the Attorney General states that 66 files

cases have been dealt with by the judicial system, the purge will not be seen to have addressed the demand that the police be held accountable vis-à-vis allegations of pervasive corruption and criminal activities. A draft reformed police law is currently before Congress and a proposal for the reform of career service in the police is also being drafted.

14. Gaps in the security-related domestic legal framework relating to violence and insecurity need to be closed urgently. Areas requiring urgent attention include the revision or adoption of legislation on the control of firearms and ammunition and the regulation of private security companies (A/HRC/24/45/Add.1). In addition, services for assistance to and protection of victims of violence, their participation in the legal process and access to an effective remedy and gender-sensitive reparations need to be strengthened, including through the adoption of a comprehensive policy or legal framework setting out the legal provisions on the rights, support and protection of victims of crime, effectively implementing international human rights principles and standards.

B. Justice

15. Impunity in Honduras is at a historically high level and represents one of the key drivers of the continued violence and insecurity. In 2016, 29 per cent of complaints received by the police were referred to the Office of the Attorney General.[16] No official data for 2016 were made available to OHCHR-Honduras, but, according to the Alianza para la Paz y la Justicia, only 4 of every 100 homicides result in a conviction.

16. Reduced investigative capacity is often identified as one of the major causes of the high level of impunity. The establishment of a technical agency for criminal investigation in 2013 within the Office of the Attorney General, mandated to investigate serious crimes, is a positive step, as is the effort to develop scientific and forensic capacity, thereby reducing reliance on the testimony of victims and witnesses, who are poorly protected in the criminal justice system. Further positive steps include the adoption of a protocol on services to victims of violence against women and the establishment of desks for particular victims of crime, such as women, lesbian, gay, bisexual, transgender and intersex people, children and persons with disabilities, in 13 offices of the Attorney General, 4 of them with multidisciplinary teams.

17. To consolidate these accomplishments, it is of paramount importance that coordination between the institutions concerned be strengthened, under the functional leadership, established by law, of the Office of the Attorney General. OHCHR-Honduras has observed weaknesses in the formulation of investigative directives issued by prosecutors to the police and their supervision. The frequent rotation of prosecutors also weakens criminal investigations, as does the absence of a protocol on investigation common to the entire Office. A memorandum of understanding to strengthen information exchange and cooperation between OHCHR-Honduras and the Office of the Attorney General, including through the provision of technical assistance and training, is currently being negotiated.

18. The Attorney General has established a number of specialized units, the last being the prosecution unit supporting the purge of the police. Given the multiplicity of entities, OHCHR-Honduras welcomes the publication in June by the Office of the Attorney General

have been referred for investigation. See press release of 20 September 2016, available from www.mp.hn/index.php/author-login/40-septiembre/784-se-crea-unidad-fiscal-de-apoyo-al-proceso-de-duparacion-policial.

[16] Ministry of Security, Police Investigation Department, Statistical Report, January-October 2016.

of its internal regulations.[17] However, the office observes that the competency to investigate and prosecute wilful killings by security forces or other State officials performing security functions rests with the Office of the Special Prosecutor for Crimes against Life.[18] This being a violation of a fundamental human right, it should be investigated and prosecuted by the Office of the Special Prosecutor for Human Rights. The latter Office has established a dedicated section on human rights defenders, which is, however, tasked only with investigating crimes committed against this group by public officials. OHCHR-Honduras recommends that both areas of responsibility be revised, in order to establish a stronger human rights context and facilitate the analysis of patterns.

19. In 2015, the Office of the Attorney General adopted its first strategic plan, for the period 2015-2020. OHCHR-Honduras encourages the Office to adopt a public prosecution strategy defining prosecution priorities, to enable it to effectively pursue public interest priorities in a context of limited resources.

20. Since 2011, the Government has taken steps to establish courts with national jurisdiction over serious crimes, including, inter alia, murder, kidnapping and drug-trafficking.[19] In May 2016, the Supreme Court of Justice established courts with national jurisdiction to hear cases of corruption[20] and extortion[21]. The support mission against corruption and impunity in Honduras monitors the selection of judges and magistrates.

21. OHCHR-Honduras has observed that prosecutors and judges dealing with sensitive cases often operate without adequate security and protection. In September, a judge of the Court of Appeals hearing a motion on the assassination of Berta Cáceres was ambushed while leaving her office and the case file was stolen. Prosecutors and judges are currently included within the purview of the law on the protection of human rights defenders, and three justice system officials are already under the protection of the mechanism created by this law. The office considers that this arrangement requires re-examination and the establishment of a dedicated framework and a protection mechanism.

22. In February, Congress elected the 15 justices (5 women and 10 men) of the Supreme Court of Justice. The Institute for Access to Public Information publicly criticized the nominating commission for failure to comply with the law on transparency and access to public information. No organic law has yet been adopted to regulate article 311 of the Constitution, stating that voting should be carried out directly and secretly as many times as necessary until the two thirds of the votes in favour required by the Constitution are obtained.

23. A weak professional career system persists within the judiciary. In March, the Supreme Court of Justice declared the 2011 law on the Council of the Judiciary and the judicial career unconstitutional,[22] automatically reinstating the law on the judicial career of 1980. The Inter-American Court of Human Rights has found that the law fails to comply with human rights standards and that both the lack of separation of administrative and judicial functions and granting the Supreme Court of Justice the power to transfer judges without the knowledge of the Council undermine judicial independence.[23] The Supreme Court, tasked with developing a legislative proposal, established a drafting committee.

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[17] Reglamento Especial de Organización y Funcionamiento de la Dirección General de Fiscalías.

[18] Ibid., p. 115.

[19] Decision 07-2011.

[20] Decision 01-2016.

[21] Decision 02-2016.

[22] Decree 219-2011.

[23] *López Lone and others v. Honduras*, judgment of 5 October 2015, paras. 210-221. Available from www.corteidh.or.cr/docs/casos/articulos/seriec_302_esp.pdf.

24. On 5 October 2015, the Inter-American Court issued its decision in relation to the case of four judges dismissed from the judicial service for their participation in peaceful demonstrations against the coup d'état.[24] The Court found that the dismissal had violated their rights to freedom of opinion and expression, freedom of assembly and political rights as well as impairing the judiciary's independence, and ordered their reinstatement. On 9 November, the Supreme Court of Justice stated that it was unable to reinstate the judges on the ground of "justified impossibility" given the unavailability of suitable posts, and opting for the payment of compensation and damages. The State had one year to implement the sentence, and it is unclear what steps had been taken to explore suitable posts. OHCHR-Honduras offered its good offices to the President of the Supreme Court to explore a suitable solution to implement the decision, but the offer was rejected.[25]

C. Prison system

25. As of October 2016, Honduras had 30 detention centres, including 1 for women, 3 pretrial detention centres located in military facilities and 1 other pretrial detention centre located in the training grounds of the National Police "COBRA" special operations command. Overcrowding, substandard conditions of detention and lack of separation of convicted and remand detainees (54 per cent of the prison population) are key concerns identified by human rights mechanisms (CAT/C/HND/CO/2). In October, there were 17,510 detainees, of whom 8,046 had been sentenced, against an official capacity of 8,130 as determined in September 2015.

26. Security within the detention centres remains of concern. In 2016, according to prison authorities, 14 male inmates died in violent circumstances, 7 while inside the centres and 7 more while in a semi-open regime. In September, State authorities announced reforms to improve security, including by placing inmates under maximum security regimes. OHCHR-Honduras observes that, while maximum security regimes are not incompatible with human rights, they should be used as a measure of last resort, decided on the basis of criteria defined by law and individualized risk assessments, and be regularly reviewed, as reflected in national legislation. The office notes that the transfer of 45 inmates, many of them unsentenced, to the new maximum security wing of the Ilama penitentiary (El Pozo) fell short of human rights guarantees, including those governing notifying the prisoners, their relatives and the judicial authorities of the transfer as well as those related to privacy during transfer.

27. OHCHR-Honduras encourages a comprehensive human rights-compliant reform of the penitentiary sector, reasserting its civilian nature, excluding military or police officers from management of the sector and from prisons, as well as guaranteeing the detention of civilians in civilian facilities only. The full roll-out of the "prison information system", the strengthening of the National Commission for the Prevention of Torture as well as the review of legislation establishing a special regime for convicted prisoners presenting a high security risk (decree 101/2015) for compliance with international standards are key priorities.

28. The trial of the director and police officers charged in connection with the February 2012 fire at the national penitentiary in Comayagua, which killed 360 inmates, is still ongoing. A reparations scheme for the families of the victims, agreed to in 2015, includes monetary compensation and other forms of reparation such as access to social programmes, housing and scholarships.

[24] Ibid.

[25] Meeting with President Argueta, 7 November 2016.

D. Transitional justice

29. For the third consecutive year, no official information has been released on progress towards the implementation of the 84 recommendations of the Truth and Reconciliation Commission established by the 2009 Agreement of Tegucigalpa/San José. The Commission's Follow-up Unit issued its last report in December 2013, indicating that 37 recommendations had been implemented and 32 were in the process of implementation, and that no action had been taken on 15 recommendations.[26]

30. No progress has been made in relation to advancing the right to truth, justice, reparation and guarantees of non-repetition for the victims of gross human rights violations that occurred during the 1980s, with particular regard to the situation of 184 cases of enforced disappearance, including 25 women. The Office of the Special Prosecutor for Human Rights has reportedly dedicated resources to the investigation of such cases, but it has not responded to requests to provide OHCHR-Honduras with official information on progress and data. The office stresses that enforced disappearances are not subject to a statute of limitation and emphasizes the continued obligation of the State to investigate and prosecute those responsible. The National Reparation Programme established by executive decree PCM-02//2008 has not been implemented.

IV. Democratic space

31. In a context of stigmatization and questioning of their work, including by government representatives, OHCHR-Honduras continues to document cases of threats, surveillance, information theft and homicides involving human rights defenders. Those cases include the assassination on 3 March 2016 in La Esperanza of Berta Cáceres, leader of the Council of Popular and Indigenous Organizations of Honduras, for which six persons are currently being detained, and the assassination on 18 October of José Ángel Flores and Silmer Dionisio George, leaders of the United Campesinos Movement of the Aguán, for which two persons have been charged. The Inter-American Court of Human Rights had granted protection measures to all three victims.

32. Efforts are ongoing to implement the law for the protection of human rights defenders, journalists, social communicators and justice personnel, adopted in May 2015. Progress has been made since June 2016, including the adoption of the regulations pertaining to the law and of standard operating procedures, the appointment of the Director of the National Mechanism for the Protection of Human Rights Defenders and the recruitment of personnel. Between 2015 and 30 September 2016, the National Mechanism received 60 requests for protection, of which 35 fell within its purview. They included 32 individual (13 women) and 3 collective measures, 22 from human rights defenders, 7 from journalists, 3 from social communicators and 3 from personnel of the justice system. The protective measures granted included 29 police measures, 3 temporary rehousings and 1 assisted departure from the country. OHCHR-Honduras is a permanent observer in the National Council of the Mechanism established by the law.

33. Between 2002 and November 2016, the Inter-American Court ordered the implementation of 63 precautionary measures, the last of which, PM 112/16, was issued in March after the killing of Berta Cáceres for the members of her organization, her family and the family's legal team. Half of such measures are issued for human rights defenders, and the remaining ones to protect lawyers, journalists, social communicators and justice

[26] *Segundo Informe de Seguimiento a las Recomendaciones de la Comisión de la Verdad y la Reconciliación*, December 2013, p. 37.

personnel. As 27 such measures protect groups[27] or communities,[28] the number of beneficiaries may be in the thousands (OHCHR-Honduras was not able to obtain official data to confirm estimates). The Ministry of Security put in place protection measures consisting of police patrols and escorts, telephone checks and emergency numbers, and in three cases video cameras were installed. Responsibility for such measures is currently transitioning from the Ministry of Security to the National Mechanism for the Protection of Human Rights Defenders, and six cases have already been taken on by the Mechanism. In this regard, it is urgent and of paramount importance that the Mechanism be fully resourced to be able to conduct risk analyses and assign diverse beneficiaries the different measures they require for their effective protection. Police protection may not be the most effective measure to counter risks, and in any case this is often rejected by beneficiaries because of lack of trust in the institution. The Mechanism is currently reviewing criteria and procedures for the identification of companies to provide protection services.

34. While OHCHR-Honduras recognizes these efforts, it remains concerned at the limited progress in determining accountability for crimes against human rights defenders, key to preventing further threats and attacks. The office has followed up the cases of 13 individuals (2 women and 11 men), beneficiaries of precautionary measures granted by the Inter-American Court, who were killed between 2012 and 2016. Five cases are in the trial phase, six are under investigation and two are still awaiting the assignment of a prosecutor. Notwithstanding some progress in high-level cases, the majority of allegations filed remain without adequate investigation or follow-up. Given the context of pervasive violence and insecurity, authorities have often attributed such attacks to common crime. For example, on 2 May 2016 journalist Félix Molina was the target of two armed robberies, and was shot in both legs in the last attack. Also, in the immediate aftermath of the assassination of Berta Cáceres, the police investigated on the hypothesis that it was a crime of passion. OHCHR-Honduras notes that the handling of investigations of attacks against human rights defenders is shared between various units within the Office of the Attorney General, with no clear lead role assigned to the Office of the Special Prosecutor for Human Rights. Strengthened internal coordination would help the pattern analysis, improve investigations and limit impunity.

35. OHCHR-Honduras remains concerned about the use of criminal law to sanction and restrict the freedoms of opinion and expression and the right to peaceful assembly, including in the context of social protest. Between March and July 2016, criminal charges and arrest warrants were issued against 103 students of the Autonomous University of Honduras protesting the revision of the academic rules. In a public communique, OHCHR-Honduras expressed its concern at the charging of 19 students, 8 of them female, with sedition under article 337 of the Criminal Code. In 2009, the High Commissioner found the definition of sedition to be incompatible with international human rights standards (see A/HRC/13/66, para. 85). In November, the Office of the Attorney General requested charges for unlawful seizing of public space (art. 231 of the Criminal Code) to be brought against 50 students of the National Agrarian University, a request that was denied by a judge. In a positive development, in July 2016, 24 farmers and members of the United Campesinos Movement of Aguán, charged in August 2012 with unlawful demonstration and damages in connection with a demonstration outside the Supreme Court of Justice, were acquitted.

36. In 2009, the High Commissioner recommended the abrogation of the crimes of slander and defamation, highlighting their chilling effect on freedom of opinion and

[27] Persons with HIV/AIDS, PM 335/02.
[28] For example, PM 935/04, PM 235/05 and PM 304/05.

expression.[29] At the time of her death, the appeal of defender Gladys Lanza against a sentence of 18 months' imprisonment for defamation pronounced in 2015 was still pending.

37. The law on the classification of public information related to security and national defence[30] represents an undue restriction on the right to access information and should be revised to comply with human rights standards.

V. Equality and non-discrimination

A. Women's rights

38. Positive steps were made in strengthening the institutional and legal framework to protect women against violence, in particular the welcome criminalization of femicide by decree No. 23-2013, the establishment of the Office of the Special Prosecutor for Women and the National Action Plan on Violence against Women 2014-2022. However, progress in reducing violence against women and girls has been slow and the problem remains a serious concern, as recently highlighted by the Committee on the Elimination of Discrimination against Women (see CEDAW/C/HND/CO/7-8, paras. 22-23). A draft law on violence against women and girls is currently in Congress, developed with the participation of women's rights organizations. Domestic violence, particularly against girls, is widespread — it is the second most reported crime[31] — and access to justice by the victims requires dedicated support, including by expanding the coverage of the specialized comprehensive care units. Standardized protocols that integrate a gender perspective into the investigation and prosecution of cases of violence against women and femicide have been adopted but require revision to comply with standards, and effective implementation.

39. In a context of entrenched gender stereotypes and high levels of gender-based violence, the 2009 ban on emergency contraception,[32] which the Supreme Court declared constitutional in 2012, and the criminalization of abortion, coupled with the limited information on sexual and reproductive health and family planning, seriously affect women's sexual and reproductive health and rights. Between January and September 2016, 28 cases of illegal abortion, 2 of them against girls, were opened by the prosecution services. In the context of the reform of the Criminal Code, OHCHR-Honduras recommended, in line with the recommendation of the Committee on the Elimination of Discrimination against Women (see CEDAW/C/HND/CO/7-8, para. 37) and others, the decriminalization of abortion, at least in cases of rape or incest, threats to life and/or the health of the woman and severe fetal impairment.

40. OHCHR-Honduras welcomes the 2012 gender quota for political party candidates, which contributed to the election to Congress of 33 women (out of 128 seats).[33] In 2016, Congress adopted a framework for the application of the equality principle and establishing a mechanism for alternating men and women candidates on electoral lists; the framework also raised the gender quota to 50 per cent starting with the 2017 elections. However, there are no temporary special measures to advance substantive equality in non-elective bodies.

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[29] Ibid.

[30] Decree 418/2013.

[31] Police Investigation Department, Statistical Report.

[32] Decree 54/2009.

[33] Inter-Parliamentary Union, *Women in Parliament in 2013: The Year in Review*, available from www.ipu.org/pdf/publications/WIP2013-e.pdf.

B. Rights of indigenous peoples

41. Honduran legislation contains hardly any recognition of or protection for the rights of indigenous peoples, including at the constitutional level (A/HRC/33/42/Add.2). International treaties form part of domestic law and article 18 of the Constitution provides that in the event of a conflict between a treaty or convention and the law, the former shall prevail. However, there is no legislation to ensure that the rights enshrined in international instruments, particularly the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, are protected at domestic level. In addition, there is limited awareness of international law on the part of the judiciary and legal practitioners, hence international law is rarely invoked in domestic courts.

42. In 2014, a public policy against racism and racial discrimination for the comprehensive development of indigenous and Afro-Honduran peoples was adopted. In 2015, a process to develop legislation on the right to free, prior and informed consent and consultation was started. In view of the need to strengthen the legislative initiative, the Government announced that it would request the assistance of the Special Rapporteur on the rights of indigenous peoples.

43. Unprecedented steps towards accountability for violations of the right to free, prior and informed consent were taken by the underresourced Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage. In July, criminal charges for abuse of authority and violation of public duties were brought against a former Minister of Natural Resources and the Environment for licensing the Aurora II hydroelectric project without consultation, as well as for authorizing the Agua Zarca dam in Intibucá. Both projects were to be implemented in the Lenca indigenous territory. Further criminal charges were brought against another former minister for his involvement in expanding the Agua Zarca project, again without either consultation or consent from indigenous peoples.

44. One of the main sources of tension between indigenous communities, State authorities and private corporations continues to be the right to consultation in the context of hydroelectric projects. In 2016, tensions continued in connection with the construction of a hydroelectric plant and a water supply project on the Cuayamel River, in the Garífuna community of Sambo Creek. In November 2015, the Inter-American Court requested Honduras to protect the members of the Indigenous Council of San Isidro and the Indigenous Lenca Movement of La Paz, as well as others, who had been targets of violence, threats and harassment for their opposition to the Los Encinos hydroelectric project.[34] In March, Berta Cáceres was assassinated, in an atmosphere of extreme social unrest surrounding the Agua Zarca project. No information is available on steps taken to reform the regulations of the mining law, as recommended by the Inter-American Court, to bring the national framework for the right to consultation in relation to mining and extractive industries into compliance with international standards.[35] Opposition to tourism projects in indigenous territories resulted in charges being brought against community leaders, such as in the case of the Garífuna community of Guadalupe.[36]

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[34] PM 589/15.

[35] *Comunidad Garífuna de Punta Piedra and its Members v. Honduras*, judgment of 8 October 2015, in which the Court stated that the State, within a reasonable time, had to adopt sufficient and necessary measures to ensure that its legislation on the mining industry respected the right to consultation in accordance with the decision. See www.corteidh.or.cr/docs/casos/articulos/seriec_304_esp.pdf (Spanish only).

[36] Discussions held with the competent prosecutor in La Ceiba as well as with members of the Garífuna Organización Fraternal Negra Hondureña in December 2016.

45. The Special Rapporteur on the rights of indigenous peoples recommended a comprehensive review of legislation and policies in the areas of property, natural resources, mining, hydrocarbons, energy projects, model cities, tourism, protected areas, forest issues and agro-industry (see A/HRC/33/42/Add.2, para. 85). Most of the actions ordered by the Inter-American Court in its December 2015 decisions in the cases involving the Garífuna communities of Triunfo de la Cruz and Punta Piedra are pending implementation; the deadline for the establishment of a development fund of $1.5 million for the two communities, as ordered by the Court, has expired.[37]

46. OHCHR-Honduras welcomes the issuance in April of titles to over 1 million hectares to 12 indigenous communities (17,500 households) in La Mosquitia, and the launching of a regional development plan. However, a number of title requests are still pending, and the issuance of titles has often not brought legal security to communities against counterclaims, harassment and violence.

C. Sexual orientation and gender identity

47. According to unofficial sources,[38] 37 members of the lesbian, gay, transsexual and intersex community were killed in 2015 and 12 between January and October 2016. The Office of the Special Prosecutor for Human Rights has reportedly put in place a system to track cases involving lesbian, gay, transsexual and intersex persons but, despite requests, has not yet shared information with OHCHR-Honduras. No official information is available on cases in which the aggravating circumstance of a hate crime on the basis of sexual orientation or gender identity, introduced in the Criminal Code in 2013, has been applied; non-governmental organizations indicate that the provision has never been used in such a case.

48. In January, the Constitutional Chamber of the Supreme Court of Justice dismissed an appeal alleging discrimination on the grounds of sexual orientation, arguing that the Constitution protects against discrimination on the grounds of sex but not sexual orientation.[39] Same-sex couples do not enjoy legal recognition, with the result that benefits accorded to married partners — including those related to pensions, taxation and inheritance — are not granted to those couples.

VI. Economic, social and cultural rights

49. Poverty and extreme poverty disproportionately affect the rural parts of the country, and in particular the western and southern areas. Data show a reduction in the incidence of poverty and extreme poverty since their peak in 2012, but figures are still below the levels prevailing prior to the coup d'état and are higher among indigenous peoples and Hondurans of African descent and in rural areas.[40]

50. Corruption and limited oversight of the use of public resources are significant obstacles hampering the use of the maximum available resources towards the progressive realization of economic, social and cultural rights. In 2014, an "institutionalized corruption scheme" in the Honduran Social Security Institute was discovered in which top officials had embezzled hundreds of millions of lempiras from the funds of the system, with a major impact on the enjoyment of the right to health and life of Hondurans. Criminal

[37] See *Comunidad Garífuna de Punta Piedra and its Members v. Honduras*, para. 298.
[38] See www.cattrachas.org.
[39] Appeal No. SCO-0286-2014.
[40] World Bank data, available from http://data.worldbank.org/?locations=HN-XN.

investigations and trials in these cases continue. Of 366 complaints of corruption filed with the prosecution service in 2015, only 14 have resulted in criminal charges.[41]

51. The Government has aligned its national planning frameworks with the 2030 Agenda for Sustainable Development, prioritizing areas such as reduction of extreme poverty, expanding coverage of the social security system, health and education, and job creation. However, faced with debt pressure, and despite a growth rate of 3.6 per cent, the budgetary allocations for the social sectors remain inadequate to satisfy minimum levels of human rights protection. For example, the allocation for the education sector in 2016 amounted to only 5.2 per cent of the gross domestic product.[42]

52. Over the past few years, several programmes have been launched to reduce the high levels of unemployment and underemployment and promote economic opportunities and decent work, key objectives in national plans. A minimum wage is established annually on the basis of collective bargaining between the State, the unions and the private sector. In 2016, the minimum wage ranged between $250 and $380 a month.[43] For some sectors, however, the agreed minimum wage is below the basic food basket price. Furthermore, a weak labour inspection system and limited access to justice to protect the right to work mean that employers often do not comply with legal requirements. OHCHR-Honduras has received numerous complaints related to non-compliance with the minimum wage, particularly in the maquila and agricultural sectors.

53. Access to land remains a cause of conflict, demonstrated by the continuing conflict in the Bajo Aguán region. In 2016, farmers' organizations demanded renewed government engagement in implementing the agreements reached with the previous administration. OHCHR-Honduras is of the view that changes have occurred since those agreements were signed with respect to the economy and trade, which may require revisions and renewed dialogue so that they can be effective instruments in overcoming the region's continued marginalization and poverty.

VII. Activities of the Office of the United Nations High Commissioner for Human Rights in Honduras

54. Between June and November, OHCHR-Honduras carried out 42 monitoring missions, for a total of 152 days. During the missions, Human Rights Officers met with authorities, social organizations, representatives of indigenous peoples, human rights defenders, victims, their relatives and lawyers, and witnesses to alleged or confirmed human rights violations. Similar activities were carried out in Tegucigalpa, including with senior government authorities.

55. The official opening of the office of the United Nations High Commissioner for Human Rights in Honduras took place on 23 November 2016, with the participation of representatives of Government, the international community, civil society and national and international non-governmental organizations.

56. OHCHR-Honduras has:

(a) Provided technical assistance to Congress in reviewing legislative initiatives, in particular on the reform of the Criminal Code;

[41] See http://asjhonduras.com/webhn/judicializacion-de-la-corrupcion-publica-2008-2015/.

[42] Committee on Economic, Social and Cultural Rights, press release, 9 June 2015, available from www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20079&LangID=E.

[43] See www.tusalario.org/honduras/portada/salario/salario-minimo.

(b) Assisted the Ministry of Human Rights, Justice, Governance and Decentralization with operationalizing the National Mechanism for the Protection of Human Rights Defenders and contributed to the development of its regulations. The office regularly participated in the work of the National Council of the Mechanism;

(c) Provided advice and technical assistance to the Ministry of Human Rights, Justice, Governance and Decentralization in the establishment of a national monitoring and reporting mechanism (inter-institutional network on human rights);

(d) Conducted training on economic, social and cultural rights for the Commission on Human Rights of Honduras. At its request, in cooperation with the United Nations Development Programme (UNDP) and the human rights ombudsman of Guatemala (representing the Global Alliance of Human Rights Institutions), OHCHR-Honduras conducted an assessment of the institutional capacity of the Commission to fully and effectively implement its mandate. The assessment will assist the Commission in the development of a plan to strengthen the institution;

(e) At the request of the parties, OHCHR-Honduras attended a dialogue between civil society organizations and the Government held to oversee the implementation of the Public Policy and National Action Plan on Human Rights 2013-2022;

(f) Promoted awareness and understanding of standards and good practices related to the right of indigenous peoples to be consulted and to give their free, prior and informed consent, in particular by broadcasting an international forum organized by the OHCHR office in Mexico;

(g) Promoted dialogue at the regional level among human rights defenders and national human rights institutions, in cooperation with the OHCHR Regional Office in Panama and the Inter-American Court, by holding a regional seminar and debate;

(h) Participated in dialogues held in the context of student protests at the National Autonomous University of Honduras and the National Agricultural University, at the request of university authorities and students;

(i) Participated in numerous debates and forums on human rights, disseminated information on human rights issues and events and published information materials.

VIII. Cooperation with United Nations human rights mechanisms

57. In the context of the UNDP/OHCHR project "Strengthening of the rule of law for the protection and promotion of human rights in Honduras", OHCHR-Honduras provided technical assistance to support Honduras in the submission of country reports to treaty bodies.[44]

58. OHCHR-Honduras provided assistance to civil society organizations in preparation for the review of Honduras by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. It supported the National Committee on the Prevention of Torture and Cruel, Inhuman or Degrading Treatment in drafting a shadow report for the Committee against Torture and supported one representative of the institution to attend the session.

[44] Committee on Economic, Social and Cultural Rights, fifty-eighth session; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, twenty-fifth session; Committee against Torture, fifty-eighth session; and Committee on the Elimination of Discrimination against Women, sixty-fifth session.

59. OHCHR-Honduras supported the official visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions from 23 to 27 May 2016. It cooperated in the visits of the Special Rapporteur on the rights of internally displaced persons and the Special Rapporteur on the situation of human rights defenders. OHCHR-Honduras disseminated the report of the Special Rapporteur on the rights of indigenous peoples on her visit (A/HRC/33/42/Add.2).

IX. Recommendations

Justice and security

60. **The High Commissioner:**

(a) Calls upon the Government to design and implement a security plan that will provide for rapid progress towards the demilitarization of public order functions, strengthens transparency and civilian oversight in relation to defence and security matters, including military intelligence activities, and guarantees the development of a professional and accountable civilian police;

(b) Urges the Government to take urgent action and identify concrete measures to assist and protect internally displaced persons, including by adopting a policy and a national law that complies with the Guiding Principles on Internal Displacement, under the coordination of the inter-institutional commission for the protection of persons displaced by violence;

(c) Calls upon Congress to ensure that domestic legislation related to the security sector that is revised or adopted is in line with human rights standards, prioritizing areas such as police reform, control of firearms and ammunition, and regulation of private security companies;

(d) Urges authorities to strengthen the protection of the rights of victims of crime and human rights violations in the context of criminal justice, including the right of victims to participate in legal proceedings and the right to an effective remedy, including gender-sensitive reparations;

(e) Urges the Attorney General to rapidly investigate the files referred to its attention by the special commission on the purge of the National Police so that, with the judiciary, concrete progress towards accountability is made;

(f) Encourages the Attorney General to adopt a public prosecution strategy that serves public interest goals, strengthening efforts in key areas including security sector accountability and human rights defenders, and urges the Office of the Attorney General to revise the investigative competencies and responsibilities of its specialized offices to promote the protection of human rights;

(g) Urges the State to develop and implement comprehensive penitentiary system reform that promotes the rehabilitative purpose of imprisonment and puts the system fully under civilian management. It should promptly take steps to ensure safety within the facilities and the separation of detainees as appropriate. Detention in military facilities should be discontinued and the National Committee on the Prevention of Torture and Cruel, Inhuman or Degrading Treatment fully resourced and supported to implement its mandate;

(h) Calls on the State to conduct a comprehensive review and reform of the legal framework related to the judiciary to ensure judicial independence. The reform

should ensure the separation of administrative functions from judicial functions and an independent and impartial disciplinary body that provides due process guarantees;

(i) Urges the State to implement and publicly report on the implementation of the recommendations of the 2011 report of the Truth and Reconciliation Commission and to renew efforts to ensure that victims of gross human rights violations such as enforced disappearance enjoy their human rights, including by developing a comprehensive and gender-sensitive policy to direct efforts to clarify the fate of the disappeared, investigating those responsible, providing reparation for the victims and establishing guarantees of non-repetition, with the full participation of the victims;

(j) Calls on Congress to engage in a reform of the Criminal Code with a solid human rights approach, taking into account the recommendations of human rights mechanisms as well as the observations of OHCHR-Honduras; and encourages Congress to open up the space for democratic participation in the development of legislative reforms by rapidly disseminating information and the text of legislative proposals, as well as by ensuring adequate space for participation during the legislative debate phase;

(k) Calls upon the State, in particular the President of the Supreme Court of Justice, to fully implement the decision of the Inter-American Court in the López Lone and others case and to reinstate the dismissed judges.

Human rights defenders

61. **The High Commissioner:**

(a) Urges the Government to take action for the development of a comprehensive policy to protect human rights defenders and women human rights defenders, as recommended by the Inter-American Court.[45] It should include the promotion of a safe and enabling environment, to which State authorities should contribute by publicly recognizing the role of defenders and the importance of their work, and clear steps to improve investigation and prosecution of crimes against human rights defenders. A dedicated space for dialogue between human rights defenders and government authorities should be established to accompany and oversee implementation of the policy, with international participation;

(b) Urges the Office of the Attorney General and the National Police to strengthen investigation of attacks against human rights defenders and make progress in their prosecution, including by making the necessary adjustments to their structure and procedures;

(c) Reiterates its recommendation made in April 2016 to the State and the Office of the Attorney General to consider requesting support from the regional or international human rights mechanisms in relation to the investigation of the assassination of indigenous leader Berta Cáceres;

(d) Urges the authorities to fully respect human rights in the context of public protests and, in particular, within the ongoing process of reforming the Criminal Code, and to refrain from unduly sanctioning the legitimate exercise of human rights, including those instrumental to the defence of human rights of others, through the criminalization of the very activities that defend human rights;

[45] *López Luna v. Honduras*.

(c) **Urges the full implementation of the law on the protection of human rights defenders and the operationalization of its mechanisms. It requests the State to allocate all necessary resources and encourages the international community, through an integrated support package, to continue to support the mechanisms.**

Women's rights

62. **The High Commissioner:**

(a) **Urges the State to ensure that women and girls have access to redress and protection. This includes the adoption of a specific law on violence against women and girls; the revision of protocols to investigate and prosecute violence and femicide to strengthen compliance with international standards, in particular the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Para", and their effective implementation; and the provision of specialized care and support to victims, including legal and psychosocial rehabilitation and reintegration programmes and shelters, in cooperation with civil society organizations;**

(b) **Calls on the State and, in particular, the Congress to reform legislation and allow abortions at least in cases of rape or incest, threats to the life and/or health of the woman and severe fetal impairment, in accordance with the State's regional and international obligations;**

(c) **Invites the State to adopt temporary special measures to promote women's participation in public life and to ensure that the legislated quotas of 50 per cent of posts for women are fully implemented in the upcoming 2017 elections;**

(d) **Urges the State to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.**

Indigenous peoples

63. **The High Commissioner:**

(a) **Calls upon all institutions of the State to respect, protect and fulfil the right to consultation and prior, free and informed consent;**

(b) **Encourages the State to engage in a comprehensive and participatory assessment of the human rights situation of indigenous peoples, to reform and develop adequate policy and legal frameworks and to invite the Special Rapporteur on the rights of indigenous peoples to guide and assist in this effort;**

(c) **Calls upon the State to redouble its efforts in the area of delimitation, demarcation, registration, expansion and upgrading of indigenous land, for which the judicial and agrarian institutions should take coordinated action to develop and strengthen specialized permanent mechanisms allowing access to justice by indigenous peoples for violations of their rights to their lands and natural resources;**

(d) **Urges the private sector, in particular companies working in the extractive, hydroelectric and tourism sectors, to exercise due diligence, assess the impact of their activities on human rights and align their policies with the Guiding Principles on Business and Human Rights.**

64. **On the rights of lesbian, gay, transgender, bisexual and intersex people, the High Commissioner calls upon the State to take concrete steps towards eliminating**

discrimination on the basis of sexual orientation and gender identity, including by clearly recognizing it as a prohibited ground of discrimination in law. It should tackle violence and ensure protection by effectively acquiring and analysing data and using existing legislation to prosecute hate crimes.

65. **With respect to economic, social and cultural social rights, the High Commissioner calls upon the State to tackle and punish corruption as a phenomenon that seriously hampers progress in the enjoyment of human rights; encourages the State to adopt and apply appropriate, disaggregated indicators to assess progress in achieving economic, social and cultural rights to help monitor and steer existing national plans; and encourages the State to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

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Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General

Annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Honduras

Corrigendum

1. **Paragraph 10, footnote 7**

   For 54 per cent *read* 54 per 100,000

2. **Paragraph 30**

   For executive decree PCM-02//2008 *read* executive decree PCM-028-2008

3. **Paragraphs 31, 33, 34, 44 and 56 (g)**

   For Inter-American Court *read* Inter-American Commission

4. **Paragraph 36**

   Delete footnote 29.

5. **Paragraph 36**

   The first sentence *should read*

   In 2009, the High Commissioner recommended the abrogation of national legislation incompatible with international standards (see A/HRC/13/66, para. 85 (a)).

6. **Paragraph 61 (a), footnote 45**

   For López Luna *read* Luna López

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